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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

VEM MILLER,

Plaintiff,

v.

CHAD BIANCO, in his individual and
official capacities; COUNTY OF
RIVERSIDE, a municipal entity; and
DOES 1 through 100,

Defendants.

Case No.: 5:25-cv-00629 KK (DTB)

**Defendants' Notice of Motion and
Motion to Dismiss and Special Motion
to Strike Plaintiff's Second Amended
Complaint; Memorandum of Points
and Authorities in Support Thereof**

*Filed concurrently with Declaration of
Eugene P. Ramirez, Notice of Manual
Lodging, and [Proposed] Order*

Judge: Hon. Kenly Kiya Kato
Courtroom: 3
Date: December 11, 2025
Time: 9:30 a.m.

Complaint Filed: March 10, 2025
Trial Date: Not Yet Set

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE THAT on December 11, 2025, at 9:30 a.m., or as soon thereafter as counsel may be heard, in the courtroom of the Honorable Kenly Kiya Kato, located in Courtroom 3 of the George E. Brown, Jr. United States Courthouse, 3470 12th Street, Riverside, California 92501, Defendants Chad Bianco and County of Riverside (“Defendants”) will and hereby do move this Court to (1) dismiss Plaintiff’s second amended complaint (“SAC”) for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6); and (2) strike Plaintiff’s SAC pursuant to California’s anti-SLAPP statute, California Code of Civil Procedure § 425.16. This motion is made upon the following grounds:

1. Plaintiff’s first cause of action for violation of the Fourth and Fourteenth Amendments fails to state a claim upon which relief can be granted because the SAC reveals that there was probable cause for the detention, search, and seizure;

2. Plaintiff’s second cause of action for violation of the First Amendment fails to state a claim upon which relief can be granted because there was probable cause for the arrest and because the SAC fails to plausibly allege a causal link;

3. Plaintiff’s third cause of action for municipal liability based on failure to train fails to state a claim upon which relief can be granted because there is no underlying constitutional violation, the SAC fails to plead something more than a single, isolated incident, and the SAC does not plausibly allege that any failure to train was done with deliberate indifference or was the moving cause of Plaintiff’s injuries;

4. Plaintiff’s fourth cause of action for failure to intervene fails to state a claim upon which relief can be granted because there is no underlying constitutional violation and because the County of Riverside cannot be liable under § 1983 on the theory of vicarious liability;

5. Plaintiff’s fifth, sixth, seventh, eighth, and ninth causes of action for slander, libel, intentional infliction of emotional distress (“IIED”), violation of the Bane Act, and defamation by implication are subject to a motion to strike because

1 they arise out of protected activity and Plaintiff cannot demonstrate a reasonable
2 likelihood of prevailing on the merits of these claims because these causes of action
3 are absolutely barred under the “official duty” and/or “litigation” privileges;

4 6. Plaintiff’s fifth and sixth causes of action for slander and libel are subject
5 to a motion to strike because Plaintiff cannot demonstrate a reasonable likelihood of
6 prevailing on the merits of these claims because the challenged oral and written
7 statements are privileged under California law;

8 7. Plaintiff’s fifth cause of action for slander is subject to a motion to strike
9 because Plaintiff cannot demonstrate a reasonable likelihood of prevailing on the
10 merits of this claim because no reasonable factfinder could conclude that the contested
11 statements implied an assertion of an objective fact that was slanderous;

12 8. Plaintiff’s seventh cause of action for IIED is subject to a motion to strike
13 because Plaintiff cannot demonstrate a reasonable likelihood of prevailing on the
14 merits of this claim because the IIED claim is duplicative and redundant of Plaintiff’s
15 slander and libel causes of action;

16 9. Plaintiff’s eighth cause of action for violation of the Bane Act is subject
17 to a motion to strike because Plaintiff cannot demonstrate a reasonable likelihood of
18 prevailing on the merits of this claim because there is no underlying constitutional
19 violation, the SAC does not allege an independent threat or coercion, and the SAC
20 fails to plausibly allege any specific intent to violate constitutional rights; and

21 10. Plaintiff’s ninth cause of action for defamation by implication is subject
22 to a motion to strike because Plaintiff cannot demonstrate a reasonable likelihood of
23 prevailing on the merits of this claim because no reasonable factfinder could conclude
24 that the contested statements implied an assertion of an objective fact and because the
25 challenged statements were substantially true.

26 This motion is based on this notice of motion and motion, the attached
27 memorandum of points and authorities, the concurrently-filed declaration of Eugene
28 P. Ramirez and notice of manual lodging (together with all of the exhibits), all of the

1 pleadings, files, and records in this proceeding, all other matters of which the Court
2 may take judicial notice, and any argument or evidence that may be presented to or
3 considered by the Court prior to its ruling.

4 **STATEMENT REGARDING CONFERENCE OF COUNSEL**

5 This motion is made following a telephonic conference of counsel pursuant to
6 Civil L.R. 7-3, which took place on September 30, 2025. Eugene P. Ramirez and
7 Yury A. Kolesnikov participated on behalf of Defendants and Ethan Bearman
8 participated on behalf of Plaintiff. The conference lasted approximately 20 minutes.
9 During the conference, the parties engaged in thorough discussion of their respective
10 positions and legal arguments with regard to each cause of action and Defendants'
11 anticipated motions. Despite their good-faith efforts, the parties were unable to reach
12 any agreement, thus necessitating the filing of the present motions.

13 DATED: October 10, 2025

Respectfully submitted,

14 **MANNING & KASS**
15 **ELLROD, RAMIREZ, TRESTER LLP**

16 By: /s/ Eugene P. Ramirez

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20 Natalya D. Vasyuk

21 *Attorneys for Defendants Chad Bianco and*
22 *County of Riverside*
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I. INTRODUCTION

Plaintiff brings this action against Sheriff Chad Bianco and County of Riverside, alleging constitutional violations and various state-law claims following Plaintiff's arrest on gun charges and Sheriff Bianco's press conference and interviews related to the incident. The Court previously dismissed Plaintiff's federal law claims, concluding that the deputies had probable cause to arrest Plaintiff, which defeated Plaintiff's First Amendment claim, and that Plaintiff failed to plausibly allege a *Monell* claim or a failure-to-intervene claim. Although Plaintiff was granted leave to amend, the second amended complaint ("SAC") remains woefully deficient.

Indeed, Plaintiff concedes that he had a handgun and a shotgun in his vehicle as he made his way to President Trump's rally on October 12, 2024. He also does not dispute that he was in possession of a large-capacity magazine. This was only three months after the first failed assassination attempt on President Trump at Butler, Pennsylvania (7/13/24), and less than a month after the second failed assassination attempt at West Palm Beach, Florida (9/15/24).

As the Court previously concluded, the foregoing facts clearly demonstrate that *the deputies had probable cause to detain and arrest Plaintiff* for possession of a loaded firearm in a vehicle in a public place and a large-capacity magazine in violation of California Penal Code §§ 25850(a) and 32310. Although Plaintiff now alleges that the firearms were *not* "loaded" (§ 28),¹ the Court can and should disregard that allegation as it is directly contradicted *by Plaintiff himself* in an audio that Plaintiff has incorporated into his complaint. Specifically, Plaintiff admits that he audio-recorded his interaction with the deputies on the day of the incident and provides the Court with a link to a "complete, true, and accurate recording of the first 3 hours, 26

¹ All "§ __" references are to the SAC, Dkt. No. 41. All "Ex. __" references are to the exhibits attached to the supporting Declaration of Eugene P. Ramirez ("Ramirez Decl."). Unless otherwise noted, all internal citations and quotation marks are omitted, and all emphasis is added.

1 minutes, and 58 seconds from Mr. Miller’s audio device captured on October 12,
2 2024.” See ¶ 30. Plaintiff’s audio can be downloaded from the following link:
3 https://drive.google.com/file/d/14RNILF2sbGvc2_SQRlxbqsbJ-Hw8RvhX. A copy
4 of the audio is also being submitted as **Exhibit F** to the Ramirez Declaration.

5 The following exchange takes place between 3:55 and 4:20 of the audio:

6 Deputy: Where are the firearms at?

7 Plaintiff: So it’s, it’s in the back, sir.

8 Deputy: OK. How many firearms are in there?

9 Plaintiff: So, I have a shotgun and a handgun in there.

10 Deputy: OK. Do you have any felonies or anything else?

11 Plaintiff: Nothing.

12 Deputy: Are those firearms registered?

13 Plaintiff: Yes, sir.

14 Deputy: *Are ... is it loaded?*

15 Plaintiff: No, the shotgun is not loaded. *The handgun is loaded, yeah.*

16 Deputy: I’m going to detain you right now for your ... my safety.
17 Do you understand?

18 Plaintiff: Yeah, I understand.

19 Ex. F at 3:55–4:20.

20 Plaintiff’s own audio thus confirms that he was in the possession of a loaded
21 handgun in violation of Penal Code § 25850(a) *prior* to the deputy’s decision to detain
22 him. As such, Plaintiff’s unlawful detention claim fails. Plaintiff’s unreasonable
23 search and seizure claims similarly fail because the *subsequent* search of his vehicle
24 was justified by the “automobile” and “search incident to arrest” exceptions

25 The SAC’s failure to plead lack of probable cause for the arrest also dooms
26 Plaintiff’s First Amendment retaliation claim. That claim also fails because SAC does
27 not to plausibly allege any causal link. The Court should dismiss the *Monell* claim
28 for lack of an underlying constitutional violation and because the SAC only alleges a
single, isolated incident and fails to plausibly plead deliberate indifference. The
failure-to-intervene claim fails because it cannot be asserted against the County.

1 The Court should also strike Plaintiff’s state-law claims for slander, libel,
2 intentional infliction of emotional distress (“IIED”), violation of the Bane Act, and
3 defamation by implication. California’s anti-SLAPP statute applies to Plaintiff’s
4 state-law claims because Sheriff Bianco’s challenged statements were made “in
5 connection with a public issue” or “an issue of public interest”—arrest of a suspect
6 with weapons at President Trump’s rally, which generated extensive public interest
7 and media coverage (as the SAC concedes). Furthermore, Plaintiff cannot
8 demonstrate that he is likely to prevail on his state-law claims because all of the claims
9 are barred under the “official duty” and/or “litigation” privileges.

10 Finally, Plaintiff’s slander and defamation-by-implication claims fail on the
11 merits because, viewing the challenged statements in the full context of the press
12 conference and interview videos, no reasonable person would interpret Sheriff
13 Bianco’s statements to be assertions of objective fact (as opposed to opinions) or to
14 imply that Plaintiff *in fact* wanted to kill the President. Instead, all of the videos
15 reveal that Sheriff Bianco was merely expressing his personal opinion and belief
16 based on the available information and disclosed all of the facts underlying his
17 opinion. Plaintiff’s other challenged statements also fail to state a claim.

18 For all these reasons, the Court should grant the motion to dismiss and motion
19 to strike in full and dismiss the SAC with prejudice and without leave to amend.

20 **II. BACKGROUND**

21 Plaintiff alleges that he is a long-time political supporter of President Trump.
22 ¶¶ 1–2, 23–24. On October 12, 2024, Plaintiff was on his way to President Trump’s
23 rally at Coachella, Riverside County. ¶¶ 4, 25. Despite the high publicity of the two
24 prior assassination attempts on President Trump, Plaintiff inexplicably had two
25 firearms in his vehicle as he made his way to the rally: “a shotgun and ... a handgun.”
26 ¶¶ 26–28. More egregiously, *the handgun was loaded*, and Plaintiff had *at least one*
27 *large-capacity magazine* in his vehicle. See ¶ 39; see also Ex. F at 3:55–4:10
28 (Plaintiff admitting in his own audio that “the handgun *is* loaded”).

Plaintiff alleges that before attempting to enter the venue parking area, he voluntarily drove up to a Riverside County Sheriff's Deputy and voluntarily disclosed that he had two firearms in his vehicle. ¶¶ 26–27. According to Plaintiff, he offered to have the deputies hold the firearms, presented a valid identification and entry passes, and made no attempt to enter the venue with the firearms. ¶¶ 27–28. Plaintiff alleges that following his voluntary disclosure, he was handcuffed, and 10 to 15 officers and agents conducted an extensive search of his vehicle. ¶¶ 29, 32.

Plaintiff was arrested and taken to jail. ¶¶ 34, 37. He was released after being cited with two misdemeanor violations: (1) Penal Code § 25850(a) (carrying a loaded firearm); and (2) Penal Code § 32310 (possessing a large-capacity magazine). ¶ 39.

Given the high-profile nature of the incident, and the wide-spread attention it immediately received, Sheriff Bianco held a press conference the following day to provide updates for the public and to answer questions. Plaintiff alleges that Sheriff Bianco made defamatory statements regarding Plaintiff during the press conference and in interviews relating to the incident. ¶¶ 42–45. He also alleges that Sheriff Bianco sent a defamatory text message to *The Epoch Times*. ¶ 41. Plaintiff alleges additional defamatory statements in March and April 2025. ¶¶ 49–51.

Plaintiff brings four federal claims: (1) Fourth and Fourteenth Amendment, (2) First Amendment, (3) municipal liability for failure to train, and (4) failure to intervene. ¶¶ 57–115. He also brings five state-law claims: (5) slander *per se*, (6) libel *per se*, (7) IIED, (8) Bane Act, and (9) defamation by implication. ¶¶ 116–163.

III. LEGAL STANDARD

A. Motion to Dismiss for Failure to State a Claim

To survive a motion to dismiss under Rule 12(b)(6), a complaint must allege “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). “A plausible claim includes factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Benavidez v. Cnty. of San Diego*, 993 F.3d 1134, 1144 (9th Cir.

2021). “Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)

B. Special Motion to Strike Under California’s Anti-SLAPP Statute

“California’s anti-SLAPP statute allows a defendant to file a ‘special motion to strike’ a plaintiff’s complaint, and involves a two-step inquiry.” *Herring Networks, Inc. v. Maddow*, 8 F.4th 1148, 1155 (9th Cir. 2021) (quoting CAL. CIV. PROC. CODE § 425.16(b)(1)). “The first step requires the defendant to make a *prima facie* showing that the plaintiff’s suit arises from an act in furtherance of the defendant’s constitutional right to free speech.” *CoreCivic, Inc. v. Candide Grp., LLC*, 46 F.4th 1136, 1140 (9th Cir. 2022). “At the second step, if, as here, the anti-SLAPP motion to strike challenges only the legal sufficiency of a claim, a district court should apply the Federal Rule of Civil Procedure 12(b)(6) standard and consider whether a claim is properly stated.” *Id.* Courts are directed to “broadly” construe the anti-SLAPP statute. *See* CAL. CIV. PROC. CODE § 425.16(a).

IV. INCORPORATION BY REFERENCE

“[I]ncorporation-by-reference is a judicially created doctrine that treats certain documents as though they are part of the complaint itself.” *Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 1002 (9th Cir. 2018). “The doctrine prevents plaintiffs from selecting only portions of documents that support their claims, while omitting portions of those very documents that weaken—or doom—their claims.”

“[A] defendant may seek to incorporate a document into the complaint if the plaintiff *refers extensively* to the document or the document *forms the basis* of the plaintiff’s claim.” *Id.* Here, Plaintiff’s SAC refers extensively to Sheriff Bianco’s press conference, his interviews, and the several news articles pertaining to those interviews. And the SAC premises Plaintiff’s state-law claims on the statements allegedly made by Sheriff Bianco at the press conference and in interviews. As such, the videos from the challenged press conference and interviews and the challenged news articles are incorporated into the SAC. *See Khoja*, 899 F.3d at 1002; *Herring*,

1 8 F.4th at 1154 (observing that the court properly considered the complaint and the
2 challenged article containing the allegedly defamatory statements).

3 In addition, a document attached to the complaint is considered part of the
4 complaint for all purposes. *See* FED. R. CIV. P. 10(c). Here, Plaintiff references and
5 invites the Court to download the “complete, true, and accurate recording” of the
6 incident. *See* ¶ 30. Plaintiff also refers extensively to the audio recording in the SAC.
7 *See, e.g.,* ¶¶ 27–30. Accordingly, the Court may properly consider the audio on the
8 motion to dismiss and is **not** required to accept as true Plaintiff’s allegations that are
9 contradicted by the audio. *See United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir.
10 2003) (the court may “consider ... documents attached to the complaint” and “may
11 assume that its contents are true for purposes of a motion to dismiss under Rule
12 12(b)(6)”; *Daniels-Hall v. Nat’l Educ. Ass’n*, 629 F.3d 992, 998 (9th Cir. 2010) (“We
13 are not, however, required to accept as true allegations that contradict exhibits
14 attached to the Complaint or matters properly subject to judicial notice ...”).

15 **V. ARGUMENT**

16 **A. The Court Should Dismiss All of Plaintiff’s Federal Claims**

17 **1. No Violation of the Fourth and Fourteenth Amendments**

18 Plaintiff concedes that his initial detention was a “lawful” *Terry* stop based on
19 reasonable suspicion. *See* ¶ 62(a); *see also Terry v. Ohio*, 392 U.S. 1, 30 (1968).
20 Plaintiff, however, challenges his subsequent arrest and the search of his car.

21 **a. Deputies Had Probable Cause to Arrest Plaintiff**

22 The Fourth Amendment protects “[t]he right of the people to be secure in their
23 persons ... and effects, against **unreasonable** searches and seizures.” U.S. CONST.
24 amend IV. “A warrantless arrest is reasonable if the officer has probable cause to
25 believe that the suspect committed a crime in the officer’s presence.” *District of*
26 *Columbia v. Wesby*, 583 U.S. 48, 56 (2018). Here, Plaintiff’s own allegations and the
27 audio that he references and incorporates into the SAC reveal that the deputies had
28 probable cause to arrest him for violations of §§ 25850(a) and 32310.

1 First, § 25850 prohibits carrying “a loaded firearm ... in a vehicle while in any
2 public place.” CAL. PEN. CODE § 25850(a). The SAC admits that Plaintiff had a
3 shotgun and a handgun in his vehicle and that he was in a public place. ¶¶ 25–28. In
4 addition, Plaintiff’s own audio recording confirms that the handgun was loaded:

5 Deputy: ***Are ... is it loaded?***

6 Plaintiff: No, the shotgun is not loaded. ***The handgun is loaded, yeah.***

7 Ex. F at 4:07–4:14. Accordingly, based on Plaintiff’s own admissions, the deputies
8 had probable cause to arrest Plaintiff for carrying a loaded firearm in a vehicle in a
9 public place in violation of § 25850(a). *See, e.g., Padilla v. City of Los Angeles*, 2023
10 WL 8610526, at *8 (C.D. Cal. June 29, 2023) (officers had probable cause to arrest
11 the driver after he voluntarily disclosed to them that he had a gun in his car).

12 Second, § 32310 prohibits possession of “any large-capacity magazine.” CAL.
13 PEN. CODE § 32310(c). Here, Plaintiff was cited for possession of a large-capacity
14 magazine and does not allege that he was *not* in possession of one. *See* ¶ 39.

15 Plaintiff’s new allegations cannot defeat probable cause. In the SAC, Plaintiff
16 alleges that the firearms were *not* “loaded.” ¶ 28. But this is ***directly contradicted*** by
17 Plaintiff’s own contemporaneous statement to the deputy, where Plaintiff admits that
18 the handgun ***was loaded***. *See* Ex. F at 4:07–4:14. The audio recording is referenced
19 extensively through the SAC (¶¶ 27–30) and, thus, is a part of the SAC for all
20 purposes. *See* FED. R. CIV. P. 10(c); *Khoja*, 899 F.3d at 1002; *see also Ritchie*, 342
21 F.3d at 908; *Daniels-Hall*, 629 F.3d at 998. The audio also confirms that Plaintiff’s
22 detention took place only ***after*** he admitted to having a loaded firearm in his vehicle
23 in a public place, thus justifying his arrest. *See* Ex. F. at 4:07–4:20.

24 In sum, once Plaintiff disclosed that he had a loaded gun in his car, the deputies
25 had probable cause to arrest him for violation of § 25850(a). The statute specifically
26 authorizes the deputies to “make an arrest without a warrant” where they have
27 “reasonable cause to believe that [Plaintiff] has violated [§ 25850(a)], ***whether or not***
28 ***[that section] has, in fact, been violated.***” *See* CAL. PEN. CODE § 25850(g)(2).

b. The Search Was Reasonable

To the extent Plaintiff challenges the seizure of his firearms, that claim fails because the deputies were “*authorized to examine*” Plaintiff’s firearms to determine if they were loaded in violation of § 25850(a). *See* CAL. PEN. CODE § 25850(b).

Plaintiff’s challenge to the extent and duration of the search of his car similarly fails. Although the Fourth Amendment generally requires a warrant for a search to be reasonable, the warrant requirement is subject to certain exceptions. *See Riley v. California*, 573 U.S. 373, 382 (2014). Here, the search of Plaintiff’s vehicle was justified by the “automobile” and “search incident to arrest” exceptions.

More than a century ago, the Supreme Court recognized an exception to the warrant requirement for searches of vehicles. *See Carroll v. United States*, 267 U.S. 132, 153 (1925). Under the “automobile” exception, as long as the police have probable cause to search the vehicle, the search is not unreasonable if it is conducted without a warrant. *See Collins v. Virginia*, 584 U.S. 586, 591–92 (2018); *Maryland v. Dyson*, 527 U.S. 465, 466–67 (1999) (*per curiam*). Separately, the Supreme Court has also recognized “the right on the part of the Government ... to search the person of the accused when legally arrested to discover and seize the fruits or evidences of crime.” *Riley*, 573 U.S. at 382. Due to “circumstances unique to the vehicle context,” the Court has extended such “searches incident to arrest” to searches of an arrestee’s vehicle “*when it is reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle.*” *Arizona v. Gant*, 556 U.S. 332, 343 (2009).

Here, as discussed above, the deputies had probable cause to arrest Plaintiff for violation of §§ 25850 and 32310 and, thus, to search his vehicle. Indeed, given Plaintiff’s disclosure that *he had firearms in his vehicle*, the deputies had probable cause to search the vehicle for those firearms and to determine if they were loaded in violation of § 25850(a). *See* CAL. PEN. CODE § 25850(b); *see also Wesby*, 583 U.S. at 57 (“Probable cause is *not* a high bar.”). Moreover, given Plaintiff’s disclosure, it was “reasonable to believe evidence relevant to the crime of arrest [*i.e.*, possession of

1 loaded firearms] might be found in the vehicle.” *See Gant*, 556 U.S. at 343–44 (“the
2 offense of arrest will supply a basis for searching the passenger compartment of an
3 arrestee’s vehicle and any containers therein”). Finally, under the “automobile”
4 exception, the deputies were also authorized to search “for evidence relevant to
5 offenses *other than the offense of arrest*” (*see id.* at 347), such as Plaintiff’s
6 possession of illegal (large-capacity) magazines for his firearms.

7 2. No First Amendment Retaliation

8 The First Amendment “prohibits government officials from subjecting an
9 individual to retaliatory actions” for engaging in protected activity. *Nieves v. Bartlett*,
10 587 U.S. 391, 398 (2019). To state a claim, “the plaintiff must allege that (1) it
11 engaged in constitutionally protected activity; (2) the defendant’s actions would chill
12 a person of ordinary firmness from continuing to engage in the protected activity; and
13 (3) the protected activity was *a substantial motivating factor* in the defendant’s
14 conduct—*i.e.*, that *there was a nexus between the defendant’s actions and an intent*
15 *to chill speech.*” *Arizona Students’ Ass’n v. Arizona Bd. of Regents*, 824 F.3d 858,
16 867 (9th Cir. 2016). Here, Plaintiff’s claim falters at the third prong.

17 To begin with, any challenge to the arrest on First Amendment grounds fails
18 because the deputies had probable cause to arrest Plaintiff. The law is clear that “[t]he
19 plaintiff pressing a retaliatory arrest claim must plead and prove *the absence of*
20 *probable cause for the arrest.*” *Nieves*, 587 U.S. at 401–02. Here, as the Court
21 previously concluded, Plaintiff’s claim fails as a matter of law because the SAC on
22 its face reveals that *the deputies had probable cause to arrest Plaintiff* for violation
23 of §§ 25850 and 32310. *See* Dkt. No. 38 at 4–7.

24 Cognizant of the foregoing, Plaintiff shifts his focus in the SAC and now
25 alleges that Sheriff Bianco took retaliatory actions *after* the arrest based on Plaintiff’s
26 protected First Amendment activity. *See* ¶¶ 74–87. Plaintiff, however, still fails to
27 plausibly plead that any such action was taken *as a result* of any protected activity.

28 To state a claim for First Amendment retaliation, Plaintiff must allege that

1 constitutionally-protected conduct was *a “substantial” or “motivating” factor* for the
2 alleged adverse action. *See Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle*, 429
3 U.S. 274, 287 (1977). Here, even assuming that Sheriff Bianco’s statements can
4 qualify as an “adverse action,” the SAC lacks *any* factual content to plausibly allege
5 that any protected activity (such as Plaintiff’s attendance at the rally, his political
6 journalism, or his support for President Trump) was a substantial or motivating factor
7 for such adverse action. *See Iqbal*, 556 U.S. at 678.

8 On the contrary, the SAC confirms that *the only* reason for Sheriff Bianco’s
9 statements was to defend the deputies’ decision to arrest Plaintiff, to provide the facts
10 regarding the arrest as well as Sheriff Bianco’s personal opinions on the arrest, and to
11 answer questions from the public and the press. Plaintiff’s conclusory allegations to
12 the contrary lack any factual support and, thus, are insufficient to push Plaintiff’s
13 allegations past the “plausibility” threshold. *See id.* (“Where a complaint pleads facts
14 that are ‘merely consistent with’ a defendant’s liability, it stops short of the line
15 between possibility and plausibility of entitlement to relief.”).

16 3. Plaintiff’s *Monell* Claim Fails

17 Plaintiff seeks to impose *Monell* liability under the theory of failure to train.
18 To begin with, the claim fails because the FAC does not plausibly allege any
19 underlying constitutional violation. *See Lockett v. Cnty. of Los Angeles*, 977 F.3d
20 737, 741 (9th Cir. 2020). The claim also fails on the merits.

21 The pleading hurdle is higher where plaintiff alleges *Monell* liability under the
22 “failure to train” theory. *See Connick v. Thompson*, 563 U.S. 51, 61 (2011). To state
23 a claim, Plaintiff must establish that the training practices amounted to “deliberate
24 indifference,” which generally requires showing “[a] pattern of similar constitutional
25 violations by untrained employees.” *See id.* at 61–62.

26 Here, Plaintiff’s conclusory allegations are insufficient to meet this heightened
27 standard. *See Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011). Plaintiff’s claim
28 appears to be premised on the County’s alleged failure to adequately train employees

1 regarding (1) voluntary firearm disclosures, (2) media communications, (3) detention
2 rights, and (4) political event security conditions. *See* ¶¶ 92–95. The SAC, however,
3 fails to allege **any** prior incidents involving voluntary firearm disclosures, media
4 communications, or political event security conditions. Instead, it relies on inapposite
5 prior instances dealing with jail operations and in-custody deaths. *See* ¶ 99. None of
6 those prior instances comes close to matching the allegations asserted in the SAC.
7 *See Hyde v. City of Willcox*, 23 F.4th 863, 875 (9th Cir. 2022) (“an inadequate training
8 policy itself cannot be inferred from a single incident”).

9 **4. Failure-to-Intervene Claim Fails**

10 Plaintiff’s claim for failure to intervene fails because, as discussed above, the
11 SAC fails to plausibly allege any underlying constitutional violation. *See Shepard v.*
12 *Perez*, 609 F. App’x 942, 942–43 (9th Cir. 2015); *Gilton v. City & Cnty. of San*
13 *Francisco*, 2023 WL 5600082, at *11 (N.D. Cal. Aug. 29, 2023). It also fails because
14 it is asserted only against the County of Riverside, even though the County (as a
15 municipality) **cannot** be liable under § 1983 on a *respondeat superior* theory. *See*
16 *Monell v. Dep’t of Soc. Servs. of City of New York*, 436 U.S. 658, 691 (1978).

17 **B. The Court Should Grant Defendants’ Anti-SLAPP Motion and** 18 **Strike the State-Law Causes of Action**

19 Plaintiff’s five state-law claims are premised on Sheriff Bianco’s protected
20 activity and must be stricken because Plaintiff cannot demonstrate a reasonable
21 probability of prevailing on the merits of those claims, particularly because each of
22 these claims is barred under one or more privileges set forth in Civil Code § 47.

23 **1. Plaintiff’s Claims Arise Out of Protected Activity**

24 The first step of the anti-SLAPP inquiry “requires the defendant to make a
25 *prima facie* showing that the plaintiff’s suit arises from an act in furtherance of the
26 defendant’s constitutional right to free speech.” *CoreCivic*, 46 F.4th at 1140. To
27 meet their burden, Defendants need only demonstrate that Plaintiff’s lawsuit arises
28 from activity that is protected under Civil Code § 425.16(e).

1 Here, Plaintiff’s state-law claims are premised on Sheriff Bianco’s statements
2 at the press conference and during interviews regarding Plaintiff’s detention and
3 arrest, as well as a single alleged text message to *The Epoch Times*. See ¶¶ 118, 128,
4 134, 145, 152–154. Each of these amounts to “protected activity” under the statute.

5 For example, subsection (e)(3) applies to “any written or oral statement or
6 writing made in a place open to the public or a public forum in connection with an
7 issue of public interest.” CAL. CIV. PROC. CODE § 425.16(e)(3). Here, all of Sheriff
8 Bianco’s challenged statements (except for a single text message) were oral
9 statements made in a place open to the public or a public forum (press conference and
10 interviews) and were made in connection with an “issue of public interest” (arrest of
11 a suspect with loaded weapons at a Trump rally, after two prior assassination attempts
12 on President Trump, which generated extensive public interest and media coverage).

13 Subsection (e)(4), in turn, applies to “**any other conduct** in furtherance of the
14 exercise of the constitutional right of petition or the constitutional right of free speech
15 in connection with a public issue or an issue of public interest.” CAL. CIV. PROC.
16 CODE § 425.16(e)(4). It is broader than subsection (e)(3) and has been construed to
17 apply even to “private communications, **so long as they concern a public issue.**” See
18 *Wilbanks v. Wolk*, 121 Cal. App. 4th 883, 897 (2004). Here, all of Sheriff Bianco’s
19 interviews, the press conference, and even the text message fall squarely within this
20 catchall provision because they were made “in connection with a public issue” and
21 concerned “an issue of public interest”—the arrest of a person with loaded weapons
22 at President Trump’s rally during a presidential campaign closely followed by the
23 entire nation that, at the time, already included two failed assassination attempts.

24 The Legislature intended the anti-SLAPP statute to be construed “broadly.”
25 See CAL. CIV. PROC. CODE § 425.16(a). Subsections (e)(3) and (e)(4) in particular
26 “are quite broad.” See *Wilbanks*, 121 Cal. App. 4th at 893. “In articulating what
27 constitutes a matter of public interest, courts look to certain specific considerations,
28 such as whether the subject of the speech or activity ‘was a person or entity in the

1 public eye’ or ‘could affect large numbers of people beyond the direct participants’;
2 and whether the activity ‘occurred in the context of an ongoing controversy, dispute
3 or discussion’ or ‘affected a community in a manner similar to that of a governmental
4 entity.’” *See FilmOn.com Inc. v. DoubleVerify Inc.*, 7 Cal. 5th 133, 145–46 (2019);
5 *see also Nygard, Inc. v. Uusi-Kerttula*, 159 Cal. App. 4th 1027, 1042 (2008) (“an
6 issue of public interest” is “any issue in which the public is interested”).

7 Here, Sheriff Bianco’s statements regarding the arrest of a person with loaded
8 weapons at President Trump’s rally—whether made at a press conference, during an
9 interview, or in a text message to a newspaper—clearly concerned “***an issue of public***
10 ***interest***” because they concerned President Trump (“a person ... in the public eye,”
11 *see FilmOn.com*, 7 Cal. 5th at 145–46) and were made during a presidential campaign
12 closely followed by the entire nation that, at the time, already included ***two failed***
13 ***assassination attempts***. Moreover, a potential assassination attempt on a former
14 President of the United States and the leading candidate for President during a highly-
15 contested election campaign is also clearly an event that “could affect large numbers
16 of people beyond the direct participants,” particularly because it “occurred in the
17 context of an ongoing controversy, dispute or discussion” (*i.e.*, a highly-contested
18 election campaign) and because it “affect[s] [the country] in a manner similar to that
19 of a governmental entity.” *See id.* at 145–46.

20 Finally, ***the context*** of Sheriff Bianco’s statements makes clear that they were
21 made on a public issue because they were made to the media for dissemination to the
22 public on a topic of great public interest. *See id.* at 140 (“the context of a defendant’s
23 statement is relevant”); *see also San Diegans for Open Gov’t v. San Diego State Univ.*
24 *Rsch. Found.*, 13 Cal. App. 5th 76, 101 (2017).

25 **2. Plaintiff Cannot Establish Reasonable Probability of** 26 **Prevailing on the Merits of the State-Law Claims**

27 At second step, where the anti-SLAPP motion challenges only legal sufficiency
28 of the claims, the Court applies the Rule 12(b)(6) standard to consider whether a claim

1 is properly stated. *CoreCivic*, 46 F.4th at 1140. Here, Plaintiff cannot show a
2 reasonable probability of prevailing on his claims because they are absolutely barred
3 under the “official duty” and “litigation” privileges. *See Makaeff v. Trump Univ.,*
4 *LLC*, 715 F.3d 254, 264 (9th Cir. 2013) (if defendant’s statements “lie within
5 California’s statutory litigation privilege,” then plaintiff “has no probability of
6 success on the merits” and the special motion to strike should be granted); *Digerati*
7 *Holdings, LLC v. Young Money Ent., LLC*, 194 Cal. App. 4th 873, 888 (2011) (“A
8 plaintiff cannot establish a probability of prevailing if the litigation privilege
9 precludes the defendant’s liability on the claim.”). The claims also fail on the merits.

10 **a. Absolutely Barred by the “Official Duty” Privilege**

11 The “official duty” privilege under § 47(a) applies to statements made “[i]n the
12 proper discharge of an official duty.” *See* CAL. CIV. CODE § 47(a). It exists to allow
13 public officials “the freedom to make tough policy decisions ***and tell the public about***
14 ***the reasons behind those decisions***,” without fear of retaliation. *See Maranatha*
15 *Corr., LLC v. Dep’t of Corr. & Rehab.*, 158 Cal. App. 4th 1075, 1079 (2008). This is
16 an “absolute” privilege that is “***not*** negated by malice or other personal motivation of
17 the publisher.” *See Kilgore v. Younger*, 30 Cal. 3d 770, 778 (1982).

18 “Cases applying the doctrine are legion.” *See Maranatha*, 158 Cal. App. 4th at
19 1087–88 (collecting cases). For example, in *Barr v. Matteo*, a scandal developed in
20 the office of a federal agency concerning employees who had been permitted to take
21 their accumulated terminal-leave payments and then be rehired. 360 U.S. 564, 565–
22 66 (1959). The affair received widespread publicity, prompting the acting director of
23 the agency to suspend two of his subordinates and issue a press release implying that
24 they were responsible for the misdeeds. *Id.* at 567. In a libel suit by the two officials,
25 the U.S. Supreme Court held that the director’s statements were absolutely privileged.
26 *Id.* at 574. In so holding, the Court observed that the director headed “an important
27 agency of government” and “a publicly expressed statement of the position of the
28 agency head ... was an appropriate exercise of the discretion which an officer of that

1 rank must possess if the public service is to function effectively.” *Id.* at 574–75.

2 California Supreme Court followed suit in *Saroyan v. Burkett*, finding that the
3 privilege applied to bar a defamation suit based on statements by the Superintendent
4 of Banks to the press relating to plaintiff’s conduct as attorney for the state banking
5 department. 57 Cal. 2d 706, 707–08 (1962). The Court observed that the defendant
6 was “the head of the State Banking Department” and that he “was acting in the
7 exercise of an executive function when he defended the policy of his department,”
8 entitling him to an absolute privilege. *Id.* at 710–11. And in *Kilgore*, the California
9 Supreme Court upheld the application of the privilege to statements in a report
10 distributed by the Attorney General at a press conference, which claimed that plaintiff
11 was involved in illegal bookmaking. 30 Cal. 3d at 774–75, 781–82.

12 In *Maranatha*, Court of Appeal found the privilege to apply to a letter published
13 by the director of the Department of Corrections that accused a private prison
14 contractor of misappropriating public funds. 158 Cal. App. 4th at 1079. The Court
15 observed that “[l]ike the government officials in *Barr*, *Saroyan* and *Kilgore*, [the
16 director] released the termination letter to the press in defense of a policy decision she
17 made.” *Id.* at 1088. Similarly, in *Morrow v. L.A. Unified School District*, Court of
18 Appeal applied the privilege to statements in an interview by the Superintendent of
19 Schools that criticized the plaintiff’s handling of a series of violent campus
20 disturbances. 149 Cal. App. 4th 1424, 1429 (2007). The court observed that the
21 superintendent “was publicly explaining the district’s response to a matter of
22 widespread concern, which was one of his official duties.” *Id.* at 1442–43.

23 In California, sheriffs are ***constitutionally-mandated officials*** who are
24 supervised directly by the state Attorney General. *See* CAL. CONST. art. V, § 13; *id.*
25 art. XI, § 1(b). As the sheriff, Sheriff Bianco exercises significant responsibilities.
26 *See* CAL. GOV’T CODE §§ 26600–26604. Chief among the sheriff’s duties is the
27 obligation to “preserve peace,” including through participation in “any project of
28 crime prevention.” *See* CAL. GOV’T CODE § 26600.

1 Here, Sheriff Bianco was properly discharging his official duties as the sheriff
2 when he made the challenged statements. As the sheriff, he has an obligation to keep
3 the public informed about the operation of the Sheriff's Department, which includes
4 conducting press conferences and submitting to interviews about high-profile arrests.
5 Indeed, the SAC concedes that Plaintiff's arrest received wide media coverage and
6 was of great public interest. *See* ¶¶ 46–47; *see also* Ex. A at 0:50–1:20 (noting that
7 there was ***a lot of media attention*** regarding Plaintiff's arrest and that Sheriff Bianco
8 was there to give information regarding the arrest and to answer questions).

9 Nor can there be any dispute that the subject of the press conference, interviews,
10 and text message to *The Epoch Times* involved ***public and official business***. Indeed,
11 just like the government officials in *Barr*, *Saroyan*, *Kilgore*, *Maranatha*, and *Morrow*,
12 Sheriff Bianco held the press conference, sat for interviews, and sent the challenged
13 text message to *The Epoch Times* to defend and explain the deputies' decision to
14 detain and arrest Plaintiff. "Because a public official's duty includes the duty to keep
15 the public informed of his or her management of the public business, ***press releases,***
16 ***press conferences and other public statements by such officials are covered by the***
17 ***'official duty' privilege***, although similar statements by private litigants are not
18 covered by the litigation privilege." *See Maranatha*, 158 Cal. App. 4th at 1089.

19 At the end of the day, the public's confidence in law enforcement depends on
20 the law enforcement being open and transparent about arrests, including the high-
21 profile arrest of Plaintiff in this case. To paraphrase the California Court of Appeal's
22 observation in another case: "Public officials in [Sheriff Bianco's] capacity should
23 be encouraged to engage in frank and open communication on important public issues
24 in order to function effectively in the offices entrusted to them. The public benefit of
25 such communications outweighs the potential harm to any individual's reputation."
26 *See Copp v. Paxton*, 45 Cal. App. 4th 829, 843 (1996).

27 In sum, the "official duty" privilege completely bars all of Plaintiff's state-law
28 claims against Sheriff Bianco and, by extension, against the County as his employer.

b. Absolutely Barred by the Litigation Privilege

Sheriff Bianco’s statements are also immune under the “litigation” privilege, which applies to communications made as part of the “judicial proceeding” and “in any other official proceeding authorized by law.” *See* CAL. CIV. CODE § 47(b)(1), (3). The privilege is applicable “to **any communication**, whether or not it amounts to a publication, and all torts except malicious prosecution.” *Silberg v. Anderson*, 50 Cal. 3d 205, 212 (1990). “This privilege is absolute in nature, applying to **all** publications, **irrespective of their maliciousness**.” *Action Apartment Ass’n, Inc. v. City of Santa Monica*, 41 Cal. 4th 1232, 1241 (2007).

The “litigation” privilege is given a “broad interpretation” (*id.*) and, as relevant here, extends to statements made **preliminary to litigation**. *See Rubin v. Green*, 4 Cal. 4th 1187, 1194–95 (1993). To that end, a prelitigation communication is absolutely privileged so long as it has “**some relation** to a proceeding **actually contemplated in good faith and under serious consideration**.” *See id.*

Here, Sheriff Bianco’s statements were made in his official capacity as the sheriff and **in relation to the arrest and citation of Plaintiff** for violation of, among other things, Penal Code § 25850(a). ¶ 39. At the time that the alleged statements were made, and given Plaintiff’s arrest, a criminal prosecution was contemplated in good faith and under serious consideration, triggering the litigation privilege. Indeed, since the incident, **charges have been filed against Plaintiff** for the firearm violation and are currently pending. *See* Exs. G, H, I.²

The litigation privilege also applies because Sheriff Bianco’s statements were made in the course of police investigation, which qualifies as “any other official proceeding authorized by law.” *See* CAL. CIV. CODE § 47(b)(3). As the California

² Under Federal Rule of Evidence 201(b)(2), the Court can take judicial notice of the misdemeanor complaint against Plaintiff and the criminal docket. *See United States v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir.1992); *Disabled Rights Action Committee v. Las Vegas Events, Inc.*, 375 F.3d 861, 866 n.1 (9th Cir. 2004).

1 Court of Appeal observed: “The term ‘official proceeding’ extends to *investigatory*
2 *activities* by public agencies.” *Garamendi v. Golden Eagle Ins. Co.*, 128 Cal. App.
3 4th 452, 478 (2005). “The privilege is not restricted to statements made once a
4 proceeding has been commenced, but may apply to statements made in advance.” *Id.*
5 Thus, “[t]he ‘official proceeding’ privilege has been *interpreted broadly* to protect
6 communication to *or from* governmental officials which may precede the initiation
7 of formal proceedings.” *Id.*; *see also Hagberg v. Cal. Fed. Bank*, 32 Cal. 4th 350,
8 365, 370 (2004) (“communications are privileged under section 47(b) when they are
9 intended to instigate official governmental investigation into wrongdoing, *including*
10 *police investigation*”) (resolving split in authority).

11 In addition, California courts have interpreted a similar phrase (“public official
12 proceeding”) in § 47(d) to include police investigations. *See Balzaga v. Fox News*
13 *Network, LLC*, 173 Cal. App. 4th 1325, 1337 (2009) (“A ‘public official proceeding’
14 *includes a police investigation.*”); *see also Kilgore*, 30 Cal. 3d at 774, 776 (applying
15 the privilege to a news conference convened by the Attorney General to discuss a
16 report relating to persons suspected of involvement in organized criminal activity);
17 *Green v. Cortez*, 151 Cal. App. 3d 1068, 1073 (1988) (applying the privilege to
18 statements relating to a police investigation into alleged use of excessive force by the
19 police); *Hayward v. Watsonville Reg.-Pajaronian & Sun*, 265 Cal. App. 2d 255, 259–
20 61 (1968) (applying the privilege to information obtained from a police crime report
21 and FBI “rap sheet” upon which a criminal complaint was filed).

22 In sum, Sheriff Bianco’s statements made during the press conference and
23 interviews or to any newspaper (including *The Epoch Times*) relating to the detention
24 and arrest of Plaintiff are absolutely privileged under § 47(b) because they have “*some*
25 *connection or logical relation*” to the police investigation into Plaintiff’s criminal
26 violations and the subsequent criminal action instituted against Plaintiff. *See Silberg*,
27 50 Cal. 3d at 212 (the communication must “have some connection or logical relation
28 to the action”); *Rubin*, 4 Cal. 4th at 1193 (the communication must have “*some*

1 **relation**” to the proceeding and extends to prelitigation conduct that is “actually
2 contemplated in good faith and under serious consideration”); *Rusheen v. Cohen*, 37
3 Cal. 4th 1048, 1057 (2006) (privilege extends to steps taken prior to the proceeding).

4 **c. Plaintiff’s Defamation Claims Fail Because of the**
5 **“Privileged” Nature of the Challenged Statements**

6 Defamation can be effected by either “slander” or “libel.” CAL. CIV. CODE
7 § 44. Slander is “a false and **unprivileged** publication, orally uttered” that, among
8 other things, “[c]harges any person with crime” or which “by natural consequence,
9 causes actual damage.” *Id.* § 46(1), (5). Libel is “a false and **unprivileged** publication
10 by writing” that “exposes any person to hatred, contempt, ridicule, or obloquy, or
11 which causes him to be shunned or avoided, or which has a tendency to injure him in
12 his occupation.” *Id.* § 45. Here, Plaintiff’s slander and libel claims fail as a matter of
13 law because, as discussed above, the challenged oral and written statements **were**
14 **privileged** under § 47(a) and/or (b). *See* CAL. CIV. CODE § 46 (to qualify as slander,
15 the statement must be “unprivileged”); *id.* § 45 (same for libel).

16 **d. Slander Claim Fails**

17 The slander claim also fails because no reasonable factfinder could conclude
18 that the contested statements in ¶ 118 implied an assertion of an objective fact. As
19 the Ninth Circuit explained, “the threshold question in every defamation suit is
20 whether a reasonable factfinder could conclude that the [contested] statement implies
21 an assertion of objective fact.” *Herring*, 8 F.4th at 1157. The Ninth Circuit applies
22 “a three-factor test in resolving this question: (1) whether **the general tenor of the**
23 **entire work** negates the impression that the defendant was asserting an objective fact,
24 (2) whether the defendant used **figurative** or **hyperbolic** language that negates that
25 impression, and (3) whether the statement in question is susceptible of being proved
26 true or false.” *Id.* “Whether published material is reasonably susceptible of an
27 interpretation which implies a provably false assertion of fact—the dispositive
28 question in a defamation action—is a question of law for the court.” *Couch v. San*

1 *Juan Unified Sch. Dist.*, 33 Cal. App. 4th 1491, 1500 (1995).

2 More importantly, “defamatory meaning must be found, if at all, in a reading
3 of ***the publication as a whole***. Defamation actions cannot be based on snippets taken
4 out of context.” *Crowe v. Cnty. of San Diego*, 608 F.3d 406, 443 (9th Cir. 2010).
5 “The context of a statement may control whether words were understood in a
6 defamatory sense.” *Herring*, 8 F.4th at 1157. “The broad context includes the general
7 tenor of the entire work, the subject of the statements, the setting, and the format of
8 the work.” *Id.* Thus, Sheriff Bianco’s challenged statements regarding Plaintiff’s
9 detention and arrest “must be analyzed ***in the context of the entire interview [and the***
10 ***entire press conference]***, not just the portion[s]” that Plaintiff has chosen to highlight
11 or Plaintiff’s interpretation of those statements. *See Crowe*, 608 F.3d at 443.

12 Here, tested under the foregoing standards, a review of the press conference
13 and interview videos clearly demonstrates that Sheriff Bianco was only expressing
14 ***his opinion*** that, in his mind, the deputies prevented a third assassination attempt on
15 President Trump when they detained Plaintiff with loaded guns on his way to the rally.
16 Indeed, Sheriff Bianco repeatedly states that this is ***his personal opinion*** and,
17 detrimentally to Plaintiff’s claims, discloses all of the facts known at the time,
18 ***including Plaintiff’s denials*** that he did not intend to harm the President.

19 For example, the video of the press conference reveals that Sheriff Bianco
20 commenced the conference by noting that there was a lot of media attention regarding
21 Plaintiff’s arrest and that he was there to give information regarding the arrest and to
22 answer questions. Ex. A at 0:50–1:20. Sheriff Bianco notes that the deputies
23 recovered a loaded handgun and a shotgun from Plaintiff’s vehicle. *Id.* at 5:10–5:20.
24 He repeatedly comments that the investigation into Plaintiff ***is ongoing***. *Id.* at 1:15–
25 1:35, 5:30–6:00. He then notes that Plaintiff was taken into custody, booked into jail
26 on gun charges, then released, and will need to further his court case in the future. *Id.*
27 at 5:20–5:45. He observes that ***from the state law enforcement perspective***, the
28 firearm charges were what Plaintiff was arrested and booked for. *Id.* at 5:55–6:10.

1 He specifically clarifies that the deputies did **not** arrest Plaintiff for going inside the
2 rally but for having illegal guns in his car. *Id.* at 9:15–9:30.

3 Sheriff Bianco specifically acknowledges that there is absolutely no way for
4 anyone to know what was in Plaintiff’s head and that people can only “speculate”
5 what Plaintiff’s frame of mind was. *Id.* at 8:40–8:55, 9:25–9:35; *see also id.* at 10:15–
6 10:25 (only speculation as to what Plaintiff’s intentions were). It was at this juncture,
7 in response to a question, that Sheriff Bianco stated: “I **probably** did have deputies
8 that prevented a third assassination attempt.” *Id.* at 10:35–10:45. Sheriff Bianco
9 continues by again emphasizing that **investigation was still ongoing**. *Id.* at 13:40–
10 14:00. **He clearly discloses all of the facts that his opinion is based on.** *See id.* at
11 20:50–21:45 (two guns; multiple boxes of ammunition; cited for the unregistered
12 loaded firearm; booked and released with a promise to appear at next court date).

13 He then notes that any charge for potential assassination would be a federal
14 crime and handled by federal authorities, and specifically notes that he is “**not** saying
15 that they are going to be able to” prove it. *Id.* at 23:25–23:45. He then again explains
16 that it was “**the weapons charges** that we arrested him for.” *Id.* at 23:40–23:45.

17 The same is true of the statements during Sheriff Bianco’s interviews. For
18 example, during the Fox News appearance, Sheriff Bianco right off the bat states that
19 he has read Plaintiff’s denials and that “they are believable statements” and that “I
20 hope that was the case for his sake.” Ex. B at 0:45–0:55. He then observes that this
21 does not change the fact that Plaintiff brought guns to a Trump rally and that he was
22 stopped before he got inside. *Id.* at 0:50–1:05. It was only in response to a question
23 as to whether he thought he stopped a third assassination attempt, that Sheriff Bianco
24 responded: “**in our minds**, we did.” *Id.* at 2:15–2:30. Sheriff Bianco then once again
25 acknowledges that “there is a lot of speculation” that Plaintiff is “just an innocent
26 person” and observes that “he very well could be.” *Id.* at 2:30–2:45.

27 Plaintiff also challenges Sheriff Bianco’s statements to the *Riverside Press-*
28 *Enterprise*, but that article appears to have merely reprinted the statements that Sheriff

1 Bianco made at the press conference. *See* ¶ 118(a).

2 Sheriff's Bianco's News Nation interview (*see* ¶ 44) is consistent with the press
3 conference and Fox News interview. The host asks him to address "conflicting
4 reports" regarding Plaintiff's intentions and whether he still sees this as a third
5 assassination attempt. Ex. C at 0:05–0:35. Sheriff Bianco responds that the Sheriff's
6 Department will not be investigating any assassination charges, as that would be the
7 purview of the Secret Service and/or the FBI. *Id.* at 0:35–0:45. He again notes that
8 the Sheriff's Department only arrested Plaintiff for gun violations. *Id.* at 1:15–1:25.
9 He acknowledges that it would be the FBI's responsibility to investigate the incident
10 and to determine whether Plaintiff "was a threat at all" and agreed that it "certainly
11 is" a plausible explanation that Plaintiff was innocent and, if that's what the FBI
12 determines, then "more power to him." *Id.* at 1:20–1:45. Sheriff Bianco also once
13 again emphasizes that the deputies' responsibility was to make sure that Plaintiff did
14 not get into the rally with weapons, and they did, and Plaintiff was arrested for that;
15 what his intentions were is "irrelevant." *Id.* at 1:45–2:00.

16 The same is true with regard to Sheriff Bianco's statements on April 12, 2025.
17 *See* ¶ 50. There, as part of responding to questions during his campaign event, Sheriff
18 Bianco was again asked about Plaintiff's arrest. Ex. D at 58:55–59:45. He once again
19 clarified that the Sheriff's Department arrested Plaintiff for weapons violations. *Id.*
20 at 1:00:25–1:00:30. He again explained that any investigation into any attempted
21 assassination was the purview of the FBI and Secret Service. *Id.* at 1:00:30–1:00:50.
22 He noted, once again, that he "did not know what [Plaintiff] was there for" and
23 acknowledged Plaintiff's statements that he is a big Trump supporter. *Id.* at 1:00:45–
24 1:01:05. More importantly, Sheriff Bianco once again ***disclosed all of the facts*** under
25 which he and his deputies were operating and noted that, at the time of the press
26 conference, he did believe that they may have prevented a third assassination attempt,
27 given all of the available facts. *Id.* at 1:01:05–1:02:10. He also once again noted that
28 if this turned out not to be the case, great for Plaintiff. *Id.* at 1:02:10–1:02:25. He

1 emphasized once again that for him, this was irrelevant, because all that the Sheriff's
2 Department arrested Plaintiff for were the gun violations. *Id.* at 1:02:20–1:02:30.

3 The same is true of Sheriff Bianco's appearance on The Britt Mayer Show. *See*
4 ¶ 51. There, the podcaster asked Sheriff Bianco about the incident and Sheriff Bianco
5 provided the same response he did at the April 12, 2025 event. Ex. E at 16:10–18:30.
6 He discussed the media attention that the incident received, which prompted him to
7 hold the press conference on October 13, 2024, to address Plaintiff's arrest and answer
8 questions. *Id.* at 16:45–18:30. As before, Sheriff Bianco reiterated that the question
9 that he was asked at the press conference was whether he thought that they had
10 prevented a third assassination attempt, and he answered that based on the information
11 available to them at the time (once again, *providing all of the details underlying his*
12 *opinion*), he thought that they did. *Id.* at 18:30–19:25. He also once again explained
13 that he did say at the press conference that he hoped that Plaintiff was innocent, but
14 that this was irrelevant to the gun violations. *Id.* at 19:20–19:50.

15 All told, the full videos make clear that “a reasonable fact-finder could *not*
16 conclude that [Sheriff Bianco] implied that [Plaintiff was *in fact* a ‘would-be Trump
17 assassin’].” *See Crowe*, 608 F.3d at 443. In this regard, *Crowe* is on point. That case
18 involved an allegedly egregious conduct by the detectives in pinning the stabbing of
19 a young girl on her brother and several other teenagers. *Id.* at 417–425. A year later,
20 DNA testing revealed the girl's blood on the shirt of a transient who had been seen in
21 the neighborhood on the night of the murder. *Id.* at 425–26. The shirt had been
22 collected as part of the initial investigation, but never fully tested. *Id.* Charges against
23 the boys were eventually dropped, and the transient was convicted of the murder. *Id.*

24 The boys and their families sued. Among other things, they asserted
25 defamation claims against the Deputy District Attorney “based on statements she
26 made during an appearance on the news program ‘48 hours’ shortly after the
27 indictments against the boys were dismissed.” *Id.* at 442. The Ninth Circuit affirmed
28 the district court's conclusion that a reasonable fact-finder could *not* conclude that the

Deputy District Attorney implied that the boys actually killed the girl:

Viewed in the context of the interview as a whole, even Stephan’s most questionable statements can only be interpreted as *describing the evidence* that led the police to investigate the boys and allowed the prosecution to continue as far as it did and *expressing the facts that the investigation had not concluded* and that it was still possible that either the boys or Tuite would ultimately be tried for Stephanie’s murder.

Id. at 443–44.

The same is true here. Viewed in the context of the press conference and interviews as a whole, Sheriff Bianco’s statements regarding Plaintiff’s detention and arrest “can only be interpreted as describing the evidence that led [the deputies to arrest Plaintiff for firearm violations] and expressing the facts that the investigation [was still ongoing].” *See id.* Simply put, “[t]he general context of [Sheriff Bianco’s] statement[s] ... *negates the impression* that [he] implied a false assertion of fact.” *See Herring*, 8 F.4th at 1158. The videos confirm that, just like the defendant in *Herring*, Sheriff Bianco “*fairly described the general events involved*” in Plaintiff’s arrest and “*offered [his] personal perspective*” on it. *See id.* at 1158–59. “A reasonable [listener] would be able to differentiate between [Sheriff Bianco’s] commentary and the actual [details of the arrest he was discussing].” *See id.*

e. Plaintiff’s Defamation-by-Implication Claim Fails

The SAC adds a new cause of action for defamation by implication. To state a claim, Plaintiff must demonstrate that “(1) his ... interpretation of the statement is reasonable; (2) the implication or implications to be drawn convey defamatory facts, not opinions; (3) the challenged implications are *not* substantially true; and (4) the identified reasonable implications could also be reasonably deemed defamatory.” *See Issa v. Applegate*, 31 Cal. App. 5th 689, 707 (2019). Here, for largely the same reasons as discussed above with regard to Plaintiff’s slander claim, the defamation-by-implication claim fails at prong two because the SAC fails to plausibly allege that Sheriff Bianco’s implications conveyed defamatory *facts* as opposed to opinions.

i. Implication of Criminal Intent

“In reviewing a defamation claim, a court must ask as a threshold matter whether a reasonable factfinder could conclude that the contested statement implies an assertion of objective fact.” *Id.* at 707. The Court applies the “totality of the circumstances” test “to determine whether a statement is fact or opinion, and whether a statement declares or implies a provably false factual assertion”; that is, the Court “look[s] to the words of the statement itself **and the context in which the statement was made.**” *Id.* at 703. “A defamatory meaning must be found, if at all, in a reading of the publication **as a whole.**” *Id.* at 713. “Defamation actions cannot be based on snippets taken out of context.” *Id.* at 714; *accord Crowe*, 608 F.3d at 443.

Here, tested under the foregoing standards, a review of the press conference and interview videos clearly demonstrates that Sheriff Bianco was only expressing **his opinion** that, in his mind, the deputies prevented a third assassination attempt on President Trump when they detained Plaintiff with loaded guns on his way to the rally. *See supra* Part V.B.2.d. Indeed, Sheriff Bianco repeatedly states that this is **his personal opinion** and, most importantly, discloses all of the facts known at the time, **including Plaintiff’s denials** that he did not intend to harm the President.

Thus, for the same reasons as addressed above with regard to the slander claim, the SAC fails to plausibly allege that “a reasonable factfinder could conclude that the contested statement[s] impl[y] an assertion of objective fact” as opposed to Sheriff Bianco’s personal opinion. *See Issa*, 31 Cal. App. 5th at 707.

Indeed, contrary to Plaintiff’s allegations, Sheriff Bianco did **not** deliberately omit any material information. Rather, he consistently disclosed that (1) Plaintiff has denied the allegations, (2) federal investigation was ongoing and has not resulted in any charges, and (3) he hoped Plaintiff was innocent. *See, e.g.*, Ex. A at 1:15–1:35, 5:30–6:00, 8:40–8:55, 9:25–9:35, 10:15–10:25, 13:40–14:00, 23:25–23:45 (press conference); Ex. B at 0:45–0:55, 2:30–2:45 (Fox News interview); Ex. C at 0:35–0:45, 1:20–1:45 (News Nation interview); Ex. D at 1:00:30–1:01:05, 1:02:10–1:02:25

(April 12, 2025 speech); Ex. E at 19:20–19:50 (Britt Mayer podcast).

ii. Implication of Deception

Plaintiff’s remaining claims of defamation by implication also fail. For example, Plaintiff alleges that Sheriff Bianco’s comments about Plaintiff possessing “multiple fake IDs” conveyed “implication of deception.” ¶ 153(c). But the videos from the press conference and interviews demonstrate that Sheriff Bianco provided all of the details regarding his belief that Plaintiff possessed identifications with different names. And he consistently couched his statements as his *own opinions*, rather than facts. Thus, during the Fox News interview, he indicated that it was his “*personal belief*” that he didn’t know what Plaintiff’s real name was given the multiple IDs found with different names. *See* Ex. B at 5:30–6:10. Likewise, during the News Nation interview, he discussed the fact that Plaintiff had multiple IDs and multiple passports with different names in his vehicle. *See* Ex. C at 4:05–4:20.

These and similar statements in other interviews are also not actionable because they are *substantially true*. *See Issa*, 31 Cal. App. 5th at 707–08. “The law does not require the defendant to justify the literal truth of every word of the allegedly defamatory content. It is sufficient if the defendant proves true the *substance* of the charge, irrespective of slight inaccuracy in the details, so long as the imputation is substantially true so as to justify the ‘gist or sting’ of the remark.” *Id.* at 708. Here, Plaintiff’s SAC concedes that Plaintiff was in possession of passports and IDs *with different legal names and “name variations”*. *See* ¶¶ 45(c), 54. Thus, Sheriff Bianco’s statements that Plaintiff had multiple passports and IDs with different names and that Sheriff Bianco, personally, did not know what Plaintiff’s real name was were substantially true and, thus, are not actionable as slander.

iii. Implication of Extremist Affiliation

Contrary to the SAC’s allegations, the videos make clear that Sheriff Bianco *never* stated as a matter of fact that Plaintiff had extremist affiliations. Instead, he accurately reported that Plaintiff’s vehicle was unregistered (a fact that Plaintiff does

1 **not** dispute) and had a license plate that was “**indicative**” of belonging to a sovereign
2 citizens group. *See* Ex. A at 4:45–5:10, 26:05–26:25; Ex. B at 4:25–5:00; Ex. C at
3 4:20–4:25. In fact, Sheriff Bianco noted that he **never** said that Plaintiff **was part of**
4 **the sovereign citizens group**; he merely stated that Plaintiff was driving an
5 unregistered car with a license plate that was “indicative” of that group. Ex. B at
6 5:00–5:30. Moreover, contrary to SAC’s allegations, Sheriff Bianco **did** acknowledge
7 Plaintiff’s denials and disclose that Plaintiff claims to be a Trump supporter. *See*,
8 e.g., Ex. B at 0:45–0:55 (noting that he has read Plaintiff’s denials and that “they are
9 believable statements” and that “I hope that was the case for his sake”); Ex. D at
10 1:00:45–1:01:05 (acknowledging Plaintiff’s statements that he is a Trump supporter).

11 **f. IIED Claim Fails**

12 For the reasons discussed above, Plaintiff’s IIED claim fails because it is barred
13 by the official duty and litigation privileges. *See Kenne v. Stennis*, 230 Cal. App. 4th
14 953, 971–72 (2014) (applying litigation privilege to bar IIED claim). The IIED claim
15 also fails because it is superfluous to the defamation claims. *See Couch*, 33 Cal. App.
16 4th at 1504 (“When claims for invasion of privacy and emotional distress are based
17 on the same factual allegations as those of a simultaneous libel claim, they are
18 superfluous and must be dismissed.”); *Rudwall v. Blackrock, Inc.*, 2006 WL 3462792,
19 at **5–6 (N.D. Cal. Nov. 30, 2006) (dismissing an IIED claim as superfluous), *aff’d*
20 289 F. App’x 240, 242 (9th Cir. 2008).

21 **g. No Violation of the Bane Act**

22 The Bane Act provides for liability for interference with an individual’s
23 constitutional rights “by threat, intimidation, or coercion.” CAL. CIV. CODE § 52.1(b).
24 Here, the Bane Act claim fails because, as discussed above, there is no evidence of
25 any underlying constitutional violation. *See Williamson v. City of Nat’l City*, 23 F.4th
26 1146, 1155 (9th Cir. 2022). Moreover, even if Plaintiff could demonstrate an
27 underlying constitutional violation, the Bane Act still “requires a showing of
28 threatening conduct **independent from** the alleged interference or violation of a civil

1 right.” *Doe v. State of California*, 8 Cal. App. 5th 832, 842–43 (2017). Notably,
2 “[c]oercion inherent in the alleged constitutional violation” is “*insufficient* to meet
3 the statutory requirement of ‘threat, intimidation, or coercion.’” *Id.* at 842.

4 Here, to the extent Plaintiff alleges that the deputies’ actions in arresting him
5 violated the Bane Act, the SAC fails to plausibly plead any coercion *independent*
6 *from* the alleged constitutional violation (Plaintiff’s right to be free from arrest).

7 In any event, to recover under the Bane Act, Plaintiff must demonstrate “a
8 *specific intent* to violate the arrestee’s right to freedom from unreasonable seizure.”
9 *Reese v. Cnty. of Sacramento*, 888 F.3d 1030, 1043 (9th Cir. 2018). Here, there are
10 absolutely no allegations in the SAC of *any* specific intent by the deputies to deprive
11 Plaintiff of any of his constitutional rights. Indeed, the SAC acknowledges that the
12 deputies’ actions were driven by safety concerns following Plaintiff’s disclosure that
13 he was in possession of multiple firearms. *See, e.g.*, ¶¶ 26–30, 61(a).

14 Finally, to the extent Plaintiff is alleging that Sheriff Bianco’s subsequent
15 statements violated the Bane Act, the SAC fails once again to plausibly plead any
16 independent threat or coercion. Indeed, the SAC concedes that Plaintiff’s research
17 has “revealed no direct precedent regarding defamatory statements satisfying the
18 coercion element.” *See* ¶ 145. Thus, Plaintiff’s Bane Act claim fails.

19 VI. CONCLUSION

20 For all these reasons, the Court should grant Defendants’ motion to dismiss in
21 full and dismiss Plaintiff’s federal claims. The Court should also grant the anti-
22 SLAPP motion to strike and strike Plaintiff’s state-law claims. Plaintiff has now had
23 three opportunities to state a plausible claim. Because any further amendment would
24 be futile, the dismissal should be with prejudice and without leave to amend.

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DATED: October 10, 2025

Respectfully submitted,
MANNING & KASS
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CERTIFICATION PURSUANT TO LOCAL RULE 11-6.2

The undersigned, counsel of record for Defendants Chad Bianco and County of Riverside, certifies that this brief contains 9,914 words, which complies with the Court's order dated October 2, 2025. *See* Dkt. No. 43.

DATED: October 10, 2025

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MK MANNING | KASS

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 801 S. Figueroa St, 15th Floor, Los Angeles, CA 90017-3012.

On October 10, 2025, I served true copies of the following document(s) **Defendants' Notice of Motion and Motion to Dismiss and Special Motion to Strike Plaintiff's Second Amended Complaint; Memorandum of Points and Authorities in Support Thereof** described as on the interested parties in this action as follows:

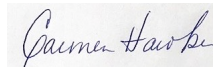
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BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the document(s) to be sent from e-mail address carmen.hawkins@manningkass.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on October 10, 2025, at Los Angeles, California.



Carmen Hawkins